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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20054

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In the Matter of)
Petition for Declaratory Ruling on Local Carrier) CC Docket No. 99-301
and Broadband Reporting Requirement)

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PETITION FOR DECLARATORY RULING

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PETITION FOR DECLARATORY RULING

Hughes Network Systems (HNS) respectfully submits this Petition for a Declaratory Ruling to clarify how the Commission intends to ensure the confidentiality of proprietary business data submitted on the Local Competition and Broadband Reporting Form (Form 477) in cases where data is submitted with respect to only a limited number of service providers in a specific category, and/or a specific type of service, identified on the Form. A declaratory ruling is an appropriate vehicle for clarifying how the Commission will meet its commitment to ensure confidentiality in such situations. The Commission's Rules specify that the Commission may issue a declaratory ruling to "remove uncertainty,"¹ and the Commission's *Report and Order*² implementing the Broadband Reporting obligation does not precisely and definitely explain when and how the Commission will aggregate licensee-provided data to ensure confidentiality.

¹ See 47 C.F.R. § 1.2.

² *In the Matter of Local Competition and Broadband Reporting*, Report and Order, CC Docket No. 99-301 (rel. March 30, 2000).

HNS provided broadband services to subscribers via satellite during the Form 477 reporting period ending December 31, 1999. Data about HNS's customers is proprietary business information that HNS does not disclose publicly. HNS would be substantially harmed were the data it included in a Form 477 filing to become publicly available.

As the only apparent satellite provider of broadband services during the reporting period, HNS hereby seeks assurance from the Commission prior to filing that the data HNS submits will be appropriately aggregated (i) with data provided by other, non-satellite based broadband providers and (ii) in a manner that will not facilitate the disclosure of HNS's proprietary data.³

Form 477 collects information on the deployment of broadband, local telephone and mobile telephony services on a state-by-state basis from providers of these services. In collecting information from broadband service providers, Form 477 categorizes these providers based on the technology used to provide these services, such as satellite, coaxial cable, terrestrial fixed wireless, etc. and, within these technology-based categories, the nature of the service provided (e.g., one-way or two-way).

The Commission has provided respondents with a streamlined method to request confidentiality of the data submitted on Form 477 by allowing respondents to request non-disclosure on line 9 of the Cover Page, in both the Commission's *Report and Order* and the *Instructions for the Local Competition and Broadband Reporting Form (Form 477)*. However, the Commission has also indicated that it intends to make some data from Form 477 publicly

³ *Order* at ¶ 87.

available.⁴ Therefore, while an individual provider may request non-disclosure of its individual data, the Commission nonetheless intends to make the data submitted available by aggregating it with data from other providers.⁵

HNS believes that it was the only satellite provider of broadband services during the reporting period in question. Commission Staff have indicated in informal discussions that they also believe HNS's services were unique in this regard during the reporting period. HNS therefore has significant concerns, the scope of which did not become apparent until it began to prepare its data for submission on Form 477, about how the Commission's plan to aggregate data would provide sufficient protection of HNS's confidential and proprietary commercial information.

In addition to its formal statements concerning confidentiality in the *Order*,⁶ when the issue of confidentiality was raised in the Commission-sponsored workshops and brown bag discussions related to the Form 477 reporting requirement, Commission Staff indicated informally that they recognized providers' legitimate competitive concerns over the use of the data submitted and would address these issues through data aggregation. In these informal settings, when asked specifically how the Commission would deal with a scenario where only one provider existed in a given provider category, such as satellites, Commission Staff recognized that a potential problem existed and that "normal" methods of aggregation would not effectively shield the provider's data. While HNS appreciates the Commission's awareness of the potential problems, before it files its proprietary data HNS needs formal written clarification

⁴ *Instructions* at 11; *Order* at ¶ 87.

⁵ *Order* at ¶ 89.

about how the Commission will aggregate such data in order to protect the confidentiality of HNS's data and protect HNS from competitive harm.

The Commission's stated intent to aggregate provider data will not protect providers, such as HNS, who are the only (or even one of a very limited number) of providers in a category. HNS therefore requests that the Commission clarify that it will not release separate data on any category of information – whether based on technology, service or geography -- *in which fewer than five service providers have submitted data for a given state*. Release of aggregated data for a group of fewer than five providers would make it possible for competitors or possible competitors, either individually or cooperatively, to deduce the information provided by a single respondent. While this is still theoretically possible with a group of five service providers, the chances are significantly reduced as compared to a smaller group.

Accordingly, HNS requests that the Commission not identify any data as submitted by satellite providers until there are at least five providers of satellite based broadband services in the state in question. The Commission may consider grouping states geographically into regions in order to reach this minimum number of service providers. This should be sufficient to protect confidential information so long as the Commission refrains from publicly disclosing the individual zip codes in which service was provided.

Until such time as five satellite providers are providing services to subscribers, the Commission should aggregate HNS's data with that of other broadband services providers in a way that will protect HNS's proprietary data. For example, the Commission could aggregate

⁶ Order at ¶¶ 87-89.

HNS's data with that of fixed wireless service providers, and/or coaxial carrier systems, as long as there are at least four such other service providers in the state or region in question.

Moreover, any aggregation that occurs should be done in a way such that the subcategories of information sought on the Form (e.g., one-way or two-way service, 200 kbps service, 2 mbps service) are not published in a manner that earmarks the data submitted by any single provider. For example, HNS's current broadband service is not defined as "full" two-way broadband service under the Form 477 definitions. If HNS were aggregated with four other service providers, each of whom provided solely "full" two-way service, competitors would be able to disaggregate the data provided by HNS, as the only non-"full" provider in the group.

HNS therefore respectfully requests that the Commission issue a declaratory ruling to clarify how the Commission will protect the confidential and proprietary commercial information that Form 477 requires HNS to submit. HNS believes that the aggregation guidelines suggested, if implemented carefully, could provide adequate assurances of confidentiality. Recognizing the importance of the information for Commission purposes, HNS intends to file the required data as soon as it receives the requested clarification on the confidentiality issues raised in this petition.

For the reasons set forth herein, Hughes Network Systems respectfully requests the Commission to clarify how the Commission intends to ensure the confidentiality of proprietary business data submitted on the Local Competition and Broadband Reporting Form (Form 477) in cases when only a limited number of service providers provide data in a specific category, and/or provide a specific type of service, identified on the Form.

Respectfully submitted,

HUGHES NETWORK SYSTEMS, INC.

By:

A handwritten signature in black ink, appearing to read "Janka", written over a horizontal line.

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